

# Sri Lanka's Legal Response to COVID-19: Past Trends and Future Prospects

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Luwie Ganeshathasan

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## Overview of Covid-19 in Sri Lanka

The Sri Lankan Government's response to Covid-19 has seen mixed results. The number of reported deaths and infections remained low due to the swift and coordinated response of the Government of Sri Lanka (GoSL) to the first wave. A total of only 3,379 cases of infection and 13 fatalities were reported between 11 March 2020 and [30 September 2020](#) (i.e. the first wave). The total number of Covid-19 cases and death rates have seen a significant increase since October 2020 with a total of 69,348 cases and 356 deaths [reported](#) as of 8 February 2021. This represents an increase of 65,969 reported cases of infection and 343 deaths during a period of just over four months. Sri Lanka's low levels of testing, compared to countries which have successfully curtailed the spread of Covid-19, remains a [concern](#). The origins of the "second wave" (including whether it is in fact a second wave) remain unclear, especially in a context where international borders were closed, and strict quarantine requirements were in place.

Despite these setbacks critical public health infrastructure has not been overwhelmed and the [total per population infection rate](#) remains comparatively low. Furthermore, for all cases reported as of 8 February 2021, the death rate remains at 0.5% (as a proportion of total cases) with 91.3% of the total cases reporting recoveries and 8.2% classified as active cases.

In the midst of this public health emergency, Sri Lanka's legal system has contributed little if anything to Sri Lanka's response to Covid-19 since March 2020. The legal system has been expected to and in a large part has in fact been "kept out of the way" of the political actors. In this post I will provide an overview of the GoSL's legal and political response to Covid-19 and will highlight the implications of key actions on the rule of law and democratic governance. I will thereafter briefly capture the outlook for 2021.

## Legal and Political Response to Covid-19

The GoSL imposed two distinct periods of "quarantine curfew" since March 2020. Several parts of the country, including the entire Western province, had been under almost continuous curfew since 20 March 2020 with restrictions gradually eased during the month of May. Thereafter, with the second wave, a curfew was imposed in the entire Western province from [29 October 2020](#) and the blanket curfew was lifted

by [9 November 2020](#). However, important population centres in the Colombo and Gampaha districts continued to remain under “quarantine curfew” through the end of November and December 2020.

The prolonged “quarantine curfew” orders since March 2020 which impacted large geographical areas and the lives of millions of citizens, do not have a clear legal basis. Curfews (the GoSL sometimes uses the term “quarantine curfew” instead of “curfew”. The term “quarantine curfew” is not defined or referenced in Sri Lankan law) have been imposed through periodic [press releases](#) issued by the Presidential Secretariat and press [statements](#) by the National Operation Centre for Prevention of Covid-19 Outbreak (NOCPCO). Some within the GoSL have [claimed](#) that the [Quarantine and Prevention of Diseases Ordinance](#) (QPDO), No.3 of 1897 provided the legal basis for such restrictions. This assertion [lacks legal merit](#) as the QPDO offers no legal basis to sustain an island wide curfew (or a curfew imposed across a large geographical area such as an entire district) imposed for a period of over one month. The QPDO does not provide the GoSL with the broad powers it claimed to have to restrict movement in the manner it did until November 2020. Moreover, in terms of Article 15(6) of the [Constitution](#) the freedom of movement can only be restricted through an Act of Parliament or by regulations made under the Public Security Ordinance.

Only the [Public Security Ordinance](#) (PSO) makes specific provisions for the imposition of a curfew, particularly on the scale that it was deployed. Such a curfew would require a written proclamation from the President, which is in turn required to be approved by Parliament [s. 16, 21 and 2(3) of PSO]. Parliament was dissolved for early elections in March 2020 and the elections were postponed until August 2020 due to Covid-19. The President repeatedly refused to utilise his constitutional power to re-summon the dissolved Parliament. [During this period, Sri Lanka was governed entirely by the executive arm of government with no oversight over public finances.](#) As such, the decision not to utilise the provisions of the PSO seems deliberate and intended to prevent the dissolved Parliament from being automatically re-convened to deal with the state of emergency.

The GoSL has resorted to issuing “[isolation orders](#)” since mid-November 2020, which apply to geographically smaller areas and do find legal expression in the regulations issued under the QPDO. This change in the scale of restrictions and of nomenclature however has more to do with balancing economic considerations with the need to curtail the spread of Covid-19, rather than with concerns about the legality of “quarantine curfews”.

As [pointed out](#) by the Human Rights Commission of Sri Lanka (HRCSL), restrictions placed on the movement of individuals are an important part of the pandemic response. Nonetheless such restrictions should be imposed in adherence to the existing legal system and constitutional safeguards.

## Extra-Legal Orders and Arbitrary Enforcement

While there are [reports](#) of individuals being arrested for violating “quarantine curfew” orders, so far publicly available information provides no reported convictions or acquittals. Accessing information on this area is difficult due to lack of reporting. The trend of imposing extra-legal orders in the hope of public compliance has continued in other areas as well. As an example, limits imposed on commercial banks when recovering monies due on loans and leasing payments were not done in terms of the law and as a result [were not followed by several private institutions](#). Another example was designating the Central Bank of Sri Lanka, commercial banks and insurances services [as essential services](#), contrary to the provisions of the PSO. Whilst some of these measures have been rectified through subsequent action, these initial actions were part of a broader pattern of disregarding the legal system.

The GoSL has also [issued health guidelines](#), inter alia mandating wearing face masks and maintaining social distancing in public places. The value of these guidelines in curtailing the spread of Covid-19 cannot be overstated. In practice, these guidelines have been implemented in an arbitrary manner. For example, whilst these guidelines have been utilised to [prevent protests](#) by families of the disappeared (although the mask mandate and the duty of social distancing were respected) in the Northern and Eastern provinces, larger gatherings organised by the government (both official [government events](#) and [private events](#) organised or attended by key government officials) have been allowed to take place in clear violation of the regulations.

The danger in this approach is that it creates [confusion](#) among the public as to what is acceptable/unacceptable behaviour and what actions will attract penal sanctions. It undermines public confidence and ultimately undercuts the purpose of the regulations (i.e. suppression of Covid-19). Whilst this pattern of arbitrary enforcement is not limited to the GoSL’s Covid-19 response (for example the GoSL has [prevented memorialization efforts in the Northern and Eastern provinces](#) to commemorate the end of the war and to remember the dead but allowed memorialization of insurrectionists in other parts of the country), it has certainly exacerbated existing problems and the inequities inherent in the system.

## A Policy of Mandatory Cremations

The policy with the harshest and most disproportionate impact on civil liberties has been the forced cremation of any cadaver even suspected of being infected with Covid-19. When this policy was first introduced in April 2020, there were objections based on disproportionate impact on persons of Islamic faith. However, due to the limited knowledge about the virus and how it spreads these objections were less prominent. As the [scientific evidence](#) increased which showed that the risk of spread through burial was non-existent, and considering the World Health Organisation’s (WHO) guidelines on the issue, protests against the GoSL increased. The GoSL made several promises to review the policy, but there has been no change despite [scientists reassuring](#) the GoSL of the safety of burials and calls from [local](#) and

[international human rights experts](#). This also seriously undercuts the GoSL's claim that its decisions are motivated only by scientific advice. This policy is enforced in a context where there has been continuous propagation of hateful and erroneous narratives about the Muslim community in Sri Lanka ([since 2012](#)). These narratives, which have also led to several instances of [widespread violence](#) against the Muslim community, have seen an increase during the pandemic. There has been a pattern of unethical reporting on Covid-19 cases within the Muslim community including by highlighting the ethnicity of patients when they are Muslims and suggesting that Muslims were to [blame for the first wave](#), is particularly problematic. These narratives have been [openly supported by prominent individuals](#) with little or no push back from the GoSL.

## **Militarisation of the Covid-19 Response**

Another equally troubling trend has been the increased militarisation of the Covid-19 response. There is most certainly a legitimate role for the military in a crisis situation such as a pandemic. However, as this is a public health emergency which requires particular skills and training, the lead should have been taken by public health experts. The main agency tasked with GoSL's Covid-19 response, the [NOCPCO](#), is *de facto* headed by the commander of the army. Furthermore, military personnel were appointed to [coordinate the Covid-19 response](#) at local level. Additionally an individual [with "a military medicine milieu"](#) was [appointed as](#) the secretary to the Ministry of Health (MoH) for the first time. These are a few examples that raise concerns as to the continued militarisation of civilian activities. The justification for these military appointments is that the military is more efficient, disciplined and is better able to carry out these functions. This rhetoric normalises military involvement in civilian activities and further undermines the efficacy of civilian institutions. It also distracts from key reforms, including depoliticization, needed within the public service. As such this is an extremely disturbing trend which will have long term impacts on the health of Sri Lankan democracy.

Overall, there is also a real danger that the GoSL's Covid-19 related policies and responses further alienating ethnic minorities and cause further divisions within an already deeply divided polity. As explained in the preceding paragraphs, Covid-19 has raised several concerns about the ability of the state to respond to emergency situations in an equitable and non-discriminatory manner. It has exacerbated fears that a highly centralized and militarised state is not responsive to the concerns of numerical minorities.

## **Outlook for 2021 and Policy Recommendations**

The GoSL has received limited domestic pushback on many of the aforementioned trends. Due to the passage of the [20th amendment to the constitution](#) and the support by a two thirds majority in Parliament, it is unlikely that the GoSL will encounter much resistance in 2021. The Supreme Court has also historically given the executive a [wide margin](#) when dealing with public emergencies and has very [rarely intervened](#) in [executive decisions](#) in such situations. Continued disregard for

existing legislation and the failure to enact new legislation even with the required majority in Parliament at its disposal are extremely worrying trends which will have detrimental consequences in the long run. Ignoring the rule of law sends a negative signal to foreign investors and bilateral partners as it is indicative of the unwillingness to “play by the rules” and of a fragile legal system. As such, the GoSL which faces [considerable macro-economic challenges](#), will need to re-examine its policies in order to project the image of a reliable location for investments.

There are two major concerns for 2021. Firstly, the pandemic will act as a catalyst of democratic backsliding, especially in providing legitimacy for constitutional changes that undermine democratic institutions and centralize power further. This concern is likely to play out during the drafting of the proposed new constitution during 2021. Secondly the increased polarization among the different ethnic communities, increased militarization and the economic consequences of Covid-19 could potentially act as a catalyst for a new cycle of violence in Sri Lanka. The GoSL itself should refrain from further aggravating ethnic tensions and must recognise the post-independence history of the country as a cautionary tale of “what not to do” to build a stable and prosperous state.

The GoSL has announced an [ambitious vaccination plan](#) to completely reopen the country before the end of 2021. Sri Lanka’s developed public health infrastructure and expertise bodes well for the effective rollout of the vaccines. The efficacy of this programme will greatly depend on whether political actors will allow the public health professionals to “do their jobs”. Whether such a successful public health response, if it is allowed to happen, will have the necessary economic benefits will depend to a great extent on averting the two key concerns identified in the penultimate paragraph.

